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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,076	08/22/2003	Yuichi Mori	51015/DBP/A400	9698

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EXAMINER

GELLNER, JEFFREY L

ART UNIT PAPER NUMBER

3643

DATE MAILED: 02/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/647,076

Applicant(s)

MORI ET AL.

Examiner

Jeffrey L. Gellner

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

A signed copy of the IDS received 26 November 2004 will accompany the next office action. Examiner is presently obtaining copies of the non-Japanese foreign patent documents.

Declaration of Akihiro Okamoto

The Declaration under 37 CFR 1.132 filed 23 January 2004 is insufficient to overcome the rejection of claims 1-14 based upon 35 USC 102 and 103 as set forth in the last Office action because: It refer(s) only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims (see MPEP § 716); and (2) Examiner considers the results described in the Okamoto Declaration to be inherent in the films used.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7, and 12-14 are rejected under 35 U.S.C. §102(b) as being anticipated by Weder et al. (US 5,363,592).

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As to Claims 1, 12-14, Weder et al. discloses a plant-cultivating container (28 of Fig. 3) having a receiving portion (36 of Fig. 3) for receiving a plant body; the container having at least a portion of it being a vapor-permeable portion comprising a non-porous hydrophilic film ("cellophane" of col. 2 line 52) which prevents direct contact between the receiving portion and external water, the selective moisture vapor-permeable portion not allowing water to pass therethrough, but allowing water vapor to pass therethrough.

As to Claim 2, Weder et al. further disclose the moisture vapor-permeable portion permeability of 1×10^3 g/m² per 24 hr (from Applicant's specification where cellophane is listed in page 13 line 16 as an acceptable moisture vapor-permeable material).

As to Claims 3 and 4, Weder et al. further disclose the ratio of vapor-permeable portion to total surface area is 20% or more of the total surface area (Figs. 1 and 3).

As to Claim 7, Weder et al. further disclose a perforated plate (Fig. 3 in that 38 is a perforation).

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 6 rejected under 35 U.S.C. §103(a) as being unpatentable over Weder et al. (US 5,363,592).

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As to Claims 5 and 6, the limitations of Claim 1 are disclosed as described above. Weder et al. further discloses the selective moisture vapor-permeable portion a composite material (col. 2 lines 56-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Weder et al. by adding water permeable material, for example burlap, to the container to add support or thickness and to place on the outside to meet consumer demand.

Claims 8-11 are rejected under 35 U.S.C. §103(a) as being unpatentable over Sakai (JP 7-45169) in view of Weder et al. (US 5,363,592).

As to Claim 8, Sakai discloses a plant container (1 of Fig. 1) having a receiving portion for a plant body (9 of Fig. 1); the container having a portion that is a selective vapor-permeable portion (2 of Fig. 1); a plant body in the container (Fig. 1); and cultivating the plant with the selective moisture vapor-permeable portion in contact with water and preventing direct contact between the plant body and external water (see Fig. 1). Not disclosed is the selective moisture vapor-permeable portion a film. Weder et al., however, discloses the selective moisture vapor-permeable portion being a film ("cellophane" of col. 2 lines 48-52). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Sakai by using the film of Weder et al. so as to find more use for the film so as to increase sale. The container of Sakai as modified by Weder et al. inherently perform the method steps recited in Claim 8.

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As to Claim 9, Sakai as modified by Weder et al. further disclose the water being temperature controlled water (in that all water has an temperature that is controlled by the ambient environment).

As to Claims 10 and 11, Sakai as modified by Weder et al. further disclose salt water (10 of Fig. 1).

Response to Arguments

Applicants' arguments received 26 November 2004 have been fully considered but they are not persuasive. Applicants' arguments are: (1) Weder et al. fails to disclose a structure that prevents direct contact between the plant body and the external water (Remarks page 7 2nd para.); and, (2) no motivation to combine Sakai and Weder et al. because Sakai deals with microporous film and Weder et al. deals with non-porous film (Remarks page 8, 2nd para.).

As to argument (1), Weder et al. discloses the use of cellophane which Applicant states as a possible film to be used in the instant invention at page 13 of the specification. Weder et al.'s embodiment shown in Fig. 3 meets the limitations of Applicants' claims because such limitations as the plant body and external water are not positively claimed. Fig. 3 of Weder et al. is capable of keeping water from directly contacting the receiving portion.

As to argument (2), Examiner considers the combination proper because both patents deal with films and floral/plant material.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053 (if disconnected try 571.272.6887). The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

A handwritten signature in black ink, appearing to read 'J. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner
Primary Examiner